

**IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

CERTUSBANK, N.A., as successor by assignment :
to ATLANTIC SOUTHERN BANK, :

Plaintiff

CIVIL ACTION
NO. 5:14-CV-69-CAR

v.

GENE DUNWODY, JR.; GENE DUNWODY,
SR.; JACK W. JENKINS; W. TONY LONG;
and L. ROBERT LOVETT,

Defendants

**DEFENDANTS' ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT
AND DEMAND FOR TRIAL BY A JURY OF TWELVE**

COME NOW Gene Dunwody, Jr.; Gene Dunwody, Sr.; Jack W. Jenkins; W. Tony Long;
and L. Robert Lovett (collectively "Defendants"), and answer and respond to the Plaintiff's
Complaint as follows:

FIRST DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Relief is barred, in whole or in part, by payment or release.

THIRD DEFENSE

Plaintiff has made an election of remedies, which bars it from bringing this action.

FOURTH DEFENSE

Plaintiff sought to confirm a foreclosure sale under O.C.G.A. § 44-14-161 with respect to
certain real estate pledged to secure the notes sued upon. After an evidentiary hearing, the

Superior Court of Bibb county denied confirmation. This bars Plaintiff from seeking this deficiency claim under O.C.G.A. § 44-14-161.

FIFTH DEFENSE

Because Plaintiff failed to confirm the foreclosure sale, this court lacks jurisdiction under O.C.G.A. § 44-14-161 to adjudicate a deficiency claim.

SIXTH DEFENSE

Plaintiff's claims are barred by *res judicata*.

SEVENTH DEFENSE

Plaintiff's claims are barred by waiver of estoppel.

EIGHTH DEFENSE

This court lacks diversity jurisdiction and subject to matter of jurisdiction.

NINTH DEFENSE

Defendants are entitled to setoff or recoupment.

TENTH DEFENSE

Plaintiff is not entitled to attorney's fees. Its purported notice under O.C.G.A. § 13-1-1 was defective and not received by all Defendants.

ELEVENTH DEFENSE

Defendants reserve all rights to add additional defenses at a time when those defenses become known.

TWELFTH DEFENSE

Defendants further state that they specifically deny any and all allegations not specifically heretofore referred to.

THIRTEENTH DEFENSE

Answering the Complaint, the numbered paragraphs of this defense correspond to the numbered paragraphs of the Complaint.

JURISDICTION

1.

Defendants deny paragraph 1 of the Complaint.

2.

Defendant Ballard was dismissed from this case.

3.

Defendant Ballard was dismissed from this case.

4.

Defendants admit paragraph 4 of the Complaint.

5.

Defendants admit paragraph 5 of the Complaint.

6.

Defendants admit paragraph 6 of the Complaint.

7.

Defendants admit paragraph 7 of the Complaint.

8.

Defendants admit paragraph 8 of the Complaint.

9.

Defendants admit paragraph 9 of the Complaint.

10.

Defendants admit paragraph 10 of the Complaint.

11.

Defendants admit paragraph 11 of the Complaint.

12.

Defendants admit paragraph 12 of the Complaint.

13.

Defendants denies paragraph 13 of the Complaint.

14.

Defendant deny paragraph 14 of the Complaint.

15.

Defendants deny paragraph 15 of the Complaint.

FACTS

Note 1 – Loan No. ***4500**

16.

Defendants admit paragraph 16 of the Complaint.

17.

Defendants admit that Exhibit "A" attached to the Complaint appears to be a photocopy of a note, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 17 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 17 that are contrary to the original document and deny any and all other allegations in paragraph 17.

18.

Defendants admit paragraph 18 of the Complaint.

19.

Defendants admit that Exhibit "B" attached to the Complaint appears to be a photocopy of an agreement, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 19 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 19 that are contrary to the original document and deny any and all other allegations in paragraph 19.

20.

Defendant Ballard was dismissed from this case.

21.

Defendants are without sufficient knowledge or information to form a belief or opinion as to the allegations contained in paragraph 50 of the Complaint and, therefore, the same stands as denied.

22.

Defendant Ballard was dismissed from this case.

23.

Defendants admit paragraph 23 of the Complaint.

24.

Defendants admit that Exhibit "D" attached to the Complaint appears to be a photocopy of a guaranty, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to

paragraph 24 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 24 that are contrary to the original document and deny any and all other allegations in paragraph 24.

25.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 25 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 25 that are contrary to the original document and deny any and all other allegations in paragraph 25.

26.

Defendants admit paragraph 26 of the Complaint.

27.

Defendants admit that Exhibit "E" attached to the Complaint appears to be a photocopy of a guaranty, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 27 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 27 that are contrary to the original document and deny any and all other allegations in paragraph 27.

28.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 28 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny

any and all allegations in paragraph 28 that are contrary to the original document and deny any and all other allegations in paragraph 28.

29.

Defendants admit paragraph 29 of the Complaint.

30.

Defendants admit that Exhibit "F" attached to the Complaint appears to be a photocopy of a guaranty, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 30 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 30 that are contrary to the original document and deny any and all other allegations in paragraph 30.

31.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 31 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 31 that are contrary to the original document and deny any and all other allegations in paragraph 31.

32.

Defendants admit paragraph 32 of the Complaint.

33.

Defendants admit that Exhibit "G" attached to the Complaint appears to be a photocopy of a guaranty, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to

paragraph 33 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 33 that are contrary to the original document and deny any and all other allegations in paragraph 33.

34.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 34 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 34 that are contrary to the original document and deny any and all other allegations in paragraph 34.

35.

Defendants admit paragraph 35 of the Complaint.

36.

Defendants admit that Exhibit "H" attached to the Complaint appears to be a photocopy of a guaranty, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 36 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 36 that are contrary to the original document and deny any and all other allegations in paragraph 36.

37.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 37 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny

any and all allegations in paragraph 37 that are contrary to the original document and deny any and all other allegations in paragraph 37.

38.

Defendants admit paragraph 38 of the Complaint.

39.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 39 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 39 that are contrary to the original document and deny any and all other allegations in paragraph 39.

40.

Defendants admit paragraph 40 of the Complaint.

41.

Defendants admit that Exhibit "I" attached to the Complaint appears to be a photocopy of a letter, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 41 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 41 that are contrary to the original document and deny any and all other allegations in paragraph 41.

42.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 42 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny

any and all allegations in paragraph 42 that are contrary to the original document and deny any and all other allegations in paragraph 42.

43.

Defendants deny paragraph 43 of the Complaint.

44.

Defendants deny paragraph 44 of the Complaint.

45.

Defendants admit paragraph 45 of the Complaint.

Note 2 – Loan No. ***4300**

46.

Defendants admit paragraph 46 of the Complaint.

47.

Defendants admit that Exhibit "J" attached to the Complaint appears to be a photocopy of a letter, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 47 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 47 that are contrary to the original document and deny any and all other allegations in paragraph 47.

48.

Defendants admit paragraph 48 of the Complaint.

49.

Defendants admit that Exhibit "K" attached to the Complaint appears to be a photocopy of a loan agreement, however, Defendants would demand strict proof that the document is what

it purports to be, and that the original true and correct copy be produced before responding to paragraph 49 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 49 that are contrary to the original document and deny any and all other allegations in paragraph 49.

50.

Defendant Ballard was dismissed from this case.

51.

Defendants are without sufficient knowledge or information to form a belief or opinion as to the allegations contained in paragraph 51 of the Complaint and, therefore, the same stands as denied.

52.

Defendants are without sufficient knowledge or information to form a belief or opinion as to the allegations contained in paragraph 52 of the Complaint and, therefore, the same stands as denied.

53.

Defendants admit paragraph 53 of the Complaint.

54.

Defendants admit that Exhibit "M" attached to the Complaint appears to be a photocopy of a guaranty, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 54 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 54 that are contrary to the original document and deny any and all other allegations in paragraph 54.

55.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 55 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 55 that are contrary to the original document and deny any and all other allegations in paragraph 55.

56.

Defendants admit paragraph 56 of the Complaint.

57.

Defendants admit that Exhibit "N" attached to the Complaint appears to be a photocopy of a note, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 57 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 57 that are contrary to the original document and deny any and all other allegations in paragraph 57.

58.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 58 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 58 that are contrary to the original document and deny any and all other allegations in paragraph 58.

59.

Defendants admit paragraph 19 of the Complaint.

60.

Defendants admit that Exhibit "O" attached to the Complaint appears to be a photocopy of a guaranty, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 60 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 60 that are contrary to the original document and deny any and all other allegations in paragraph 60.

61.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 61 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 61 that are contrary to the original document and deny any and all other allegations in paragraph 61.

62.

Defendants admit paragraph 62 of the Complaint.

63.

Defendants admit that Exhibit "P" attached to the Complaint appears to be a photocopy of a guaranty, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 63 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 63 that are contrary to the original document and deny any and all other allegations in paragraph 63.

64.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 64 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 64 that are contrary to the original document and deny any and all other allegations in paragraph 64.

65.

Defendants admit paragraph 65 of the Complaint.

66.

Defendants admit that Exhibit "Q" attached to the Complaint appears to be a photocopy of a guaranty, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 66 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 66 that are contrary to the original document and deny any and all other allegations in paragraph 66.

67.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 67 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 67 that are contrary to the original document and deny any and all other allegations in paragraph 67.

68.

Defendants admit paragraph 28 of the Complaint.

69.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 69 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 69 that are contrary to the original document and deny any and all other allegations in paragraph 69.

70.

Defendants admit paragraph 70 of the Complaint.

71.

Defendants admit that Exhibit "R" attached to the Complaint appears to be a photocopy of a letter, however, Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 71 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 71 that are contrary to the original document and deny any and all other allegations in paragraph 71.

72.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 72 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 72 that are contrary to the original document and deny any and all other allegations in paragraph 72.

73.

Defendants deny paragraph 73 of the Complaint.

74.

Defendants deny paragraph 34 of the Complaint.

75.

Defendants admit paragraph 75 of the Complaint.

Count I

BREACH OF GUARANTIES

76.

In answer to paragraph 76 of the Complaint, Defendants incorporate herein verbatim their responses to paragraphs 1 through 75 of the Complaint.

77.

Defendant Ballard was dismissed from this case.

78.

Defendants deny paragraph 78 of the Complaint.

79.

Defendants deny paragraph 79 of the Complaint.

80.

Defendants deny paragraph 80 of the Complaint.

81.

Defendants deny paragraph 81 of the Complaint.

82.

Defendants deny paragraph 82 of the Complaint.

83.

Defendants deny paragraph 83 of the Complaint.

84.

Defendants deny paragraph 80 of the Complaint.

85.

Defendant Ballard was dismissed from this case.

86.

Defendants deny paragraph 86 of the Complaint.

87.

Defendants deny paragraph 87 of the Complaint.

88.

Defendants deny paragraph 88 of the Complaint.

89.

Defendants deny paragraph 89 of the Complaint.

90.

Defendants deny paragraph 90 of the Complaint.

Count II

UNJUST ENRICHMENT

91.

In answer to paragraph 91 of the Complaint, Defendants incorporate herein verbatim their responses to paragraphs 1 through 90 of the Complaint.

92.

Defendants admit paragraph 92 of the Complaint.

93.

Defendants admit paragraph 93 of the Complaint.

94.

Defendants deny paragraph 94 of the Complaint.

95.

Defendants deny paragraph 95 of the Complaint.

96.

Defendants deny paragraph 96 of the Complaint.

Count III

ATTORNEYS' FEES AND LITIGATION COSTS

97.

In answer to paragraph 97 of the Complaint, Defendants incorporate herein verbatim their responses to paragraphs 1 through 96 of the Complaint.

98.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 98 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 98 that are contrary to the original document and deny any and all other allegations in paragraph 98.

99.

Defendants would demand strict proof that the document is what it purports to be, and that the original true and correct copy be produced before responding to paragraph 99 of the Complaint, that the true and correct original copy speaks for itself, and further Defendants deny any and all allegations in paragraph 99 that are contrary to the original document and deny any

and all other allegations in paragraph 99. Defendants further deny that all Defendants received notice of the alleged demand.

100.

Defendants deny paragraph 100 of the Complaint.

101.

Defendants deny paragraph 101 of the Complaint.

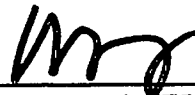
DEMAND FOR TRIAL BY A JURY OF TWELVE

Defendants demand a trial by a jury of twelve on all issues so triable.

WHEREFORE, Defendants pray:

1. That they have a trial by a jury of twelve;
2. That the Complaint against them be dismissed;
3. That costs of this action be taxed against Plaintiff; and
4. That they have such other and further relief as is just and proper.

KATZ, FLATAU & BOYER, L.L.P.
By:



WESLEY J. BOYER
State Bar No. 073126
355 Cotton Avenue
Macon, Georgia 31201
(478) 742-6481

CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the

**DEFENDANTS' ANSWER AND DEFENSES TO PLAINTIFF'S COMPLAINT
AND DEMAND FOR TRIAL BY A JURY OF TWELVE**

upon the following:

Sean A. Gordon, Esq.
Greenberg Traurig, LLP
Terminus 200
3333 Piedmont Road, NE
Suite 2500
Atlanta, GA 30305

by depositing a copy of the same in the United States mail, first class, in a properly addressed envelope with sufficient postage affixed thereto this 9th day of May, 2014.



WESLEY J. BOYER